

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**MAC East, LLC,
an Alabama Limited Liability
Corporation,**

PLAINTIFF

vs.

CASE NO. 2:05-cv-1038-MEF

**SHONEY'S INC.,
a Tennessee corporation,**

DEFENDANT

Response to Motion to Amend Answer

Comes now Plaintiff and in compliance with this Court's Order to Show Cause (Doc. 8) files the following response to the Motion to Amend Answer (Doc. 7) filed by Defendant as cause why said motion should not be granted in its entirety:

1. Paragraph 18 of the Complaint (Doc. 1, pg. 6) states:

"Per the specific requests of Shoney's, on May 9, 2005, MAC forwarded to Shoney's the proposed sublease between MAC and City Café disclosing the terms of the sublease."

2. In the original answer filed Nov. 4, 2005, Shoney's admitted said allegation without qualification. (Doc. 2, pg. 3).

3. Now, on Feb. 22, 2006, after three months have elapsed with no discovery taken on this issue, Shoney's wants to qualify its prior admission by essentially denying that it received the materials.
4. The Amendment is a material change of position by Shoney's, Inc. that, if asserted as part of the original answer would have triggered the need for additional discovery at that time.
5. Shoney's has not provided sufficient grounds to be relieved of its prior admission to paragraph 18.
6. Plaintiff objects to the amendment to the answer to paragraph 18, or, in the alternative, Plaintiff seeks permission to refer to the prior admission of Shoney's Inc. on that subject if said admission is not otherwise deemed inadmissible and/or an extension of the currently existing discovery deadline for the purpose of addressing this factual position of Shoney's Inc.
7. Plaintiff has no objection to the amendment to the response to paragraph 32 as said amendment is not a material change of position.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing through the ECMF system which will serve a copy upon a copy of the foregoing document upon the following counsel of record on this the 7th day of March, 2006.

Mr. James N. Nolan
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